

1 Shikeb Saddozai-CCLCR#AY1590
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

9 Shikeb Saddozai,
10 Petitioner/Appellant,
11 v.
12 Ron Davis, et al.,
13 Respondent/Appellees.

Case No.: 18-05558 BLF (PR)
D.C.No.:

MEMORANDUM OF LAW IN SUPPORT
OF PETITIONERS' MOTION FOR
APPOINTMENT OF COUNSEL

17 Statement of the Case

18
19 Petitioner/Appellant, a California state prisoner, filed
20 a instant pro se Civil Rights action pursuant to 42 U.S.C. §
21 1983, asserting claims for constitutional violations and seek-
ing damages as to all claims. The District Court has granted
petitioner's in forma pauperis. Petitioner has filed a declara-
tion in support of Motion for Appointment of Counsel.

ARGUMENT

THE COURT SHOULD APPOINT COUNSEL FOR THE PETITIONER

In deciding whether to appoint counsel for an indigent litigant, the court should consider "the factual complexity of the case, the ability of the indigent to investigate the facts, the ability of the indigent to present his claim, and the complexity of the legal issues." Abdullah v. Gunter, 949 F2d 1032, 1035 (8th Cir. 1991) (citation omitted). In addition, courts have suggested that the most important factor is whether the case has merit. Camona v. U.S. Bureau of Prisons, 243 F3d 529, 532 (2d Cir. 2001). Each of these factors weighs in favor of appointment of counsel in this case.

1. Factual Complexity. The petitioner alleges several claims within each claim involving a different set of arguments that arise out of the conduct, transaction or occurrence set out—or attempted to be set out—in the original pleading. The sheer number of claims and arguments make this a factually complex case that supports the appointment of counsel. Montgomery v. Pinchak, 294 F3d 492, 503-04 (2d Cir. 2002); Moore v. Mabus, 976 F2d 258, 272 (5th Cir. 1992); Jackson v. County of McLean, 953 F2d 1076, 1073 (7th Cir. 1992).
 2. The Petitioner's Ability to Investigate. The Petitioner is locked up and has no ability to investigate the facts. For example is unable to obtain the court minutes and transcripts of pleadings with regard to developing the facts as an inmate who is restricted by and in the conditions of his confinement, a factor the several courts have cited in appointing counsel. Tucker v. Randall, 948 F2d 255, 361-92 (7th Cir. 1991); Gatson v. Gatson, 575 F. Supp. 270, 273 (W.D.N.Y. 1988).
- In addition this case will require discovery to identify potential issues as to the effectiveness of representation. Petitioner received in entering his plea. See Parnam v. Johnson, 125 F3d 454, 459 (3d Cir. 1997) (holding counsel should have been appointed because "prisoners lack of legal experience and the complex discovery rules clearly put petitioners at disadvantage in counteracting the respondents' discovery tactics...these[discovery] rules prevent[the petitioner] from presenting an effective case.")

1 3. The Ability of the Indigent to Present his Claim. The
2 Petitioner is indigent prisoner with no legal training,
3 a factor that supports the appointment of counsel.
4 Forbes v. Edgar 112 F3d 262 264 (7th Cir 1997).

5 In addition Petitioner is confined and has no access to
6 receive legal materials and or has been obstructed by
7 prison officials from access to legal materials.
8 (Raying v. Johnson, 959 F2d 700 703-04 (8th Cir 1992)
9 citing lack for ready access to a law library as a factor
10 supporting appointment of counsel.)

11 4. Legal Complexity. The large number of complex legal issues
12 presented involve the constitutionality of a federal
13 statute, questions of the extent of prisoners rights under
14 the Federal disability statutes, and determine whether a
15 prisoner regulation violates a petitioner's rights of due
16 process. Hendricks v. Consaline 114 F3d 390, 394 (2d Cir 1997)
17 (Holding complexity of legal issues supported appointment
18 of counsel).

19 In addition Petitioner has requested an evidentiary hearing
20 which requires much greater legal skills than the Petitioner
21 has or can develop. Solis v. County of Los Angeles, 514 F3d
22 545 953 (8th Cir 2003) (prisoner with an eighth grade
23 education and no legal training is "ill-suited" to conduct
24 a jury trial).

25 5. Merit of the Case. The court has issued an order to
26 "Respondent to show cause, as the Petitioner's case has
27 merit. The aforementioned factors have been met. On its
28 face then, this is a meritorious case.

29 In addition upon Petitioner filing Petition on his own,
30 when the judge issues an "order to show cause", then the
31 judge must also appoint counsel to represent Petitioner
32 at States expense. Rule 4.551(c)(2).

CONCLUSION

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3 For the foregoing reasons, the court should grant the
4 petitioner's motion and appoint counsel in this case.
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6 Date: September 8, 2020

7 Agent: Andrew Shuker & Lilia Vazquez-UCC-1-308

8 Shikib Sadiqzai Petitioner in Pro Per

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